

HOUSE BILL 1350

By Overbey

AN ACT to amend Tennessee Code Annotated, Title 29,
relative to civil actions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 29, Chapter 26, Part 1, is amended by adding the following as new section to be designated as follows:

§ 29-26-122.

(a) Notwithstanding any provision of law to the contrary, in any medical malpractice or negligence action, the plaintiff shall file with the court and serve on all defendants at the time of filing the complaint an authorization form compliant with the privacy regulations promulgated pursuant to the federal Health Insurance Portability and Accountability Act of 1996 (45 CFR 164.508 and any applicable amendments thereto) that permits the counsel for the defendant or defendants to obtain, either through verbal or written means, physical and mental health information pertinent to any claims asserted by the plaintiff, including the mental impressions and opinions of the physician or healthcare provider.

(b) Authorizations executed pursuant to (a) shall be sufficiently broad to permit the release of health information by health care professionals licensed pursuant to title 63, other related allied health care professionals, and health care facilities licensed pursuant to title 68 and title 33, provided such health information is pertinent to claims asserted by the plaintiff. The defendant and defendant's counsel are prohibited from redisclosing health information obtained pursuant to the authorization except when redisclosure is necessary for the purposes of reaching final resolution of the plaintiff's malpractice action, which may include, but is not limited to, the disclosing of health information to expert witnesses, litigation support entities, or court reporters. In the event

plaintiff revokes the authorization required by (a), the court in which the malpractice action is filed shall dismiss plaintiff's lawsuit without prejudice upon motion of the defendant.

(c) This section does not require a plaintiff to authorize the disclosure of psychotherapy notes, as defined in 45 CFR 164.501 and any amendments thereto, for which separate authorization, consent, or court order may be required. This section shall not affect confidentiality protections granted to persons who are service recipients pursuant to title 33.

(d) Notwithstanding any provision of the Tennessee Rules of Civil Procedure, a defendant is not required to answer a complaint in a medical malpractice action until thirty (30) days after the authorization required by subsection (a) has been served on the defendant.

(e) The authorization required by subsection (a) shall be filed with the court and served on all defendants. The authorization shall be substantially similar to the following form:

AUTHORIZATION TO RELEASE HEALTH INFORMATION:

Plaintiff Name: _____ Address: _____
Phone: _____

A. The Plaintiff understands that he or she has placed the following medical condition or conditions at issue in a medical malpractice lawsuit:

B. The Plaintiff hereby authorizes the following persons or entities to release health information, or to speak with Defendant's counsel: (1) health care professionals licensed pursuant to Title 63 of the Tennessee Code Annotated that have treated or are treating the Plaintiff; (2) allied health care professionals that have treated or are treating the Plaintiff; and (3) health care facilities licensed under Title 68 or Title 33 of the Tennessee Code Annotated and any other health care provider that have treated or are treating the Plaintiff.

C. Information to be Disclosed: The information to be disclosed pertains to medical information relevant to the Plaintiff's claims asserted in a medical malpractice lawsuit filed in the _____ Court of _____, State of Tennessee with the Docket Number _____, which includes, but is not limited to, medical records, medical histories, discharge summaries, diagnostic test results, treatments plans, progress notes, admissions notes, or summaries of treatments, pharmacy records, or other medical information (specify): _____

D. Please release the information to the following person or organization(s):

Name: _____

(Defendant or Defendant's Counsel)

Address: _____

E. Purpose: The purpose of the use or disclosure is: At the request of the Plaintiff.

F. Revocation: Plaintiff understands that he or she may revoke this authorization at any time by sending a written notice to the person or persons identified in Paragraph D above. However, the revocation will not have any effect on any disclosures that a person or entity may have made in reliance on this Authorization before the revocation was received. Furthermore, Plaintiff understands that revocation of this authorization will result in dismissal of Plaintiff's lawsuit.

G. Expiration: Plaintiff understands that unless he or she revokes this authorization, it will remain in effect from the date hereof and continue in effect until final resolution of the Plaintiff's lawsuit.

H. Redisclosure: Plaintiff understands that information used or disclosed in accordance with this authorization may no longer be protected by federal law, and could be redisclosed by the receiving party, but only in pursuit of final resolution of the Plaintiff's lawsuit and only to the extent allowed by Title 29 of the Tennessee Code Annotated.

I. Certification: I certify that I am (check whichever applies):

- the Plaintiff, and the identification: that I have provided is true and correct.
- the Plaintiff's authorized representative, and that the identification and proof of authority that I have provided are true and correct. My relationship to the Plaintiff is that of: _____

Date: _____

Plaintiff Plaintiff Counsel

Plaintiff Signature: _____ Name: _____

Address: _____ BPR No: _____

(If different from above) Address: _____

Phone No: _____

STATE OF _____

COUNTY OF _____

Sworn to and subscribed this _____ day of _____, 200__.

Notary Signature

SECTION 2. This act does not affect rights or duties that matured, liabilities or penalties that were incurred, or proceedings begun before its effective date.

SECTION 3. This act shall take effect July 1, 2007, the public welfare requiring it.